App.F.IX-4]

1925-6 File No. 233-24

*Previous References.* ( )

Serial Nos. 1, 2, 3, 4.

*Later references.*

Registered

(26)

# GENERAL AND REVENUE SECRETARIAT.

---

*Serial Nos.* 4

**Part B for** October 1925

---

SUBJECT

petitions of Syed Osman & others in the matter of Substantiating the Statement that S. no. 135 is a Trust property or a devadaya dedicated to a religious purpose

---

To Mg Commr

" D.C Mysore District

Order No. 413-4 ~~A&C. 1271~~ dt 8.10.1925

This is primarily a question for the Court to decide

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record]

D. 1364

Petition from Syed Usman and others of Mysore appealing against the Mysore Dy. Comrs. order refusing sanction to file a suit against their opponents in the matter of the misappropriation of the realizations from S. no. 135 alleged to have been endowed as inam to Jaimulla and Nawab Sahdar Jang Maksan in Mysore city.

2) The petition is duly stamped. A copy of the order appealed against, has been produced. The appeal is in time. The order appealed against having been passed on 22-11-24.

3) The applts. pray for permission to file a civil suit against the co-pers under sec. 92 of C.P.C. (sec. 6 of Mus. Reg.) with regard to S. nos. 132 and 135 alleged to belong to the said Maksan.

3

N B- Should routine notes be written on small slips, the notes must de copied, or slips pasted on this form.

W D 1890—GPB—1,50,000—2-5-21

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

4) The Dy. Comr. found that S. no. 132 is in use by the institution and has filed a suit under sec. 92 C.P.C. & file a suit against the Appellants in respect of the Trust property subsisting on S. no. 132

5) The apltts. allege that similar Stamp has not been given to S. no. 135, though the Dy. Comr's order is silent on the point.

6) May the appellants be asked to obtain a definite finding from the Dy. Comr. re S. no. 135, and then come up to Court in appeal, if need be.?

Submit for orders.

26.2.1925.

25/2/25

N B —Should routine notes be written on small slips the notes must be clipped, or slips pasted on this form

G. R. S. III—3]

## ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record]

7) The appeal is in respect of S no 135. But the D's order is silent about it, though mention is made of the S. no in the preamble. It is in order if the parties make their definite order of the Dy Com in respect of the S no & their appeal to Govt, if they deem it necessary

25.2.25

Rec. Dey

8) The Dy Comrs order is not complete as it does not direct whether S No 135.

a report may be called for —

26.2.25.

9) Yes

26.2.25.

10) Mr Srinivasan.

27/2/25

11) Done 27.2.25.

N B Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

W D 1850—G.P.B.—1,50 000—25-21

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

---

Ch. 2. To the D. C. Mr Jones. No. 12-91

W. 2. 3. 25. Forward the three petitions for fair rent already disposed of by the recorder.

*N. B.* -Shouldroutine notes be written on small slips the notes must b cipoed, or slips pasted on this form.

G. R. S. III·2]

Muzrai Secretariat | Muz. File No. 233 of 1924

| Serial No. | |
|---|---|
| 3. | From, the Muz. Comr<br>Letter no. Dis 1202/24-25 dt<br>8-4-1925.<br>Forwards in original the<br>Dy. Comr's. Comm no. C 597 dt<br>4-4-1925 reporting on the<br>subject.<br>1) The Dy. Comr reports that<br>as no documentary proof<br>was forthcoming to establish<br>the statement of the late<br>Mal S. no. 135 [illegible]<br>a Trust property [illegible]<br>devadaya devaka [illegible]<br>a religious object, [illegible]<br>it was [illegible]<br>Mpanels,<br>a [illegible]<br>gra[illegible] |

NOTE—Contn. sheet

WD 0561 - GPB—3750—1 8 22

767/30.4.25 Member

D/30.4.25

G. R. S. III. 2]

Muzrai Secretariat

Muz. File No. 233 of 192 6

Serial No.

13)

14)

15)

NOTE—Contn. sheet

WD 0561—GPB—8750—1-8 22

[illegible] that the land [illegible]

[illegible]

[illegible]

[illegible]

for Vol 5

(19) The D.C. seems to have misunderstood his powers.

Sec 92 of the Civil Procedure Code is mainly enacted to prevent an indefinite number of reckless & harassing suits being brought against trustees by different persons interested in the trust. [See 24 Cal 418, 425; 32 Mad 131, 135]

Hence the main function of D.C. is to see whether the persons seeking permission have an interest in the trust.

But as the section uses the expressions "in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature," his has a Statutory duty to see whether the trust is a public trust as defined in the Code & whether there are prima facie grounds for thinking that there has been a breach of trust. [See also 24 Cal 418, 428.]

Thus D.C. has no right to decide whether any property is a trust property or not. This is primarily a question for the Court to decide & not for the sanctioning authority.

The words "alleged breach ... of trust" make his position clear.

In the present case, D.C. has not given his finding on the question of any trust attached to Survey No 135 in his original order.

It is only in his report, he says that there is no documentary evidence to substantiate the petitioner's case. This is an obstacle opinion formed without hearing full evidence of By 17) the Court not entitled to any weight. Having regard to the fact that all the persons interested in a trust have a right to bring a suit & that the primary object of seeking permission is only to prevent a ~~number~~ groundless suits by different interested persons & that D.C. has only to satisfy as to the prima facie ~~about~~ existing for breach of a trust, this Court ought to have given in respect of S. No 135 as well. If the property is found to be not a trust property, the persons suing will bear the costs of litigation trust D.C.

18) In this view also ~~Court may~~ perhaps D.C. may perhaps be directed to (see Court in as prayed for

Rev Sec
DK Comptr

D.A.
22.8

1st member)

19) I agree

20) Draft reply to the DC (or Draft order) may be put up accordingly for approval

h
24/8

10-8 25

24.8.25

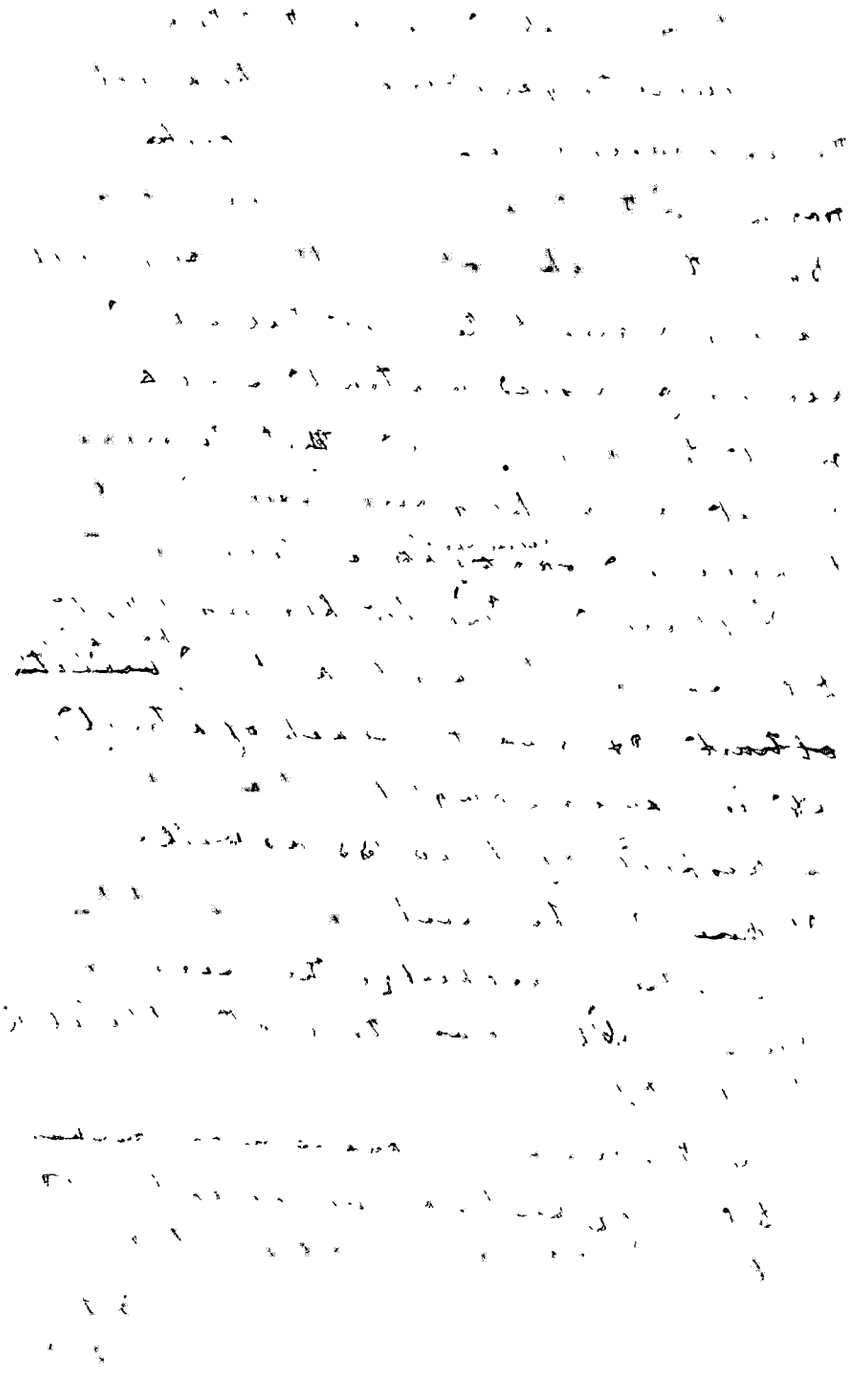
6/8
24-8

Contn. Sheet

G.R.S III-2]

File No. of 19 .

Serial No.



NOTE—Contin. S

G. R. S. III-2]

General and Revenue Secretariat. | File No. | of 191 .

Serial No.

21) Draft. to Secretary.

22) Have practically rewritten the draft. Draft ...

23) Submitted.

24) Draft ... for approval

(Secretary) (1st member)

406/16 9 25) Please see pencil remarks on the draft

26) The chapter has been revised as indicated in pencil. In the note under appeal no reasons for appeal are assigned. See the appeal between the explanatory statements & his appeal a vide punctuation.

(1st member)

530/22 9

27) I have drafted a ... Shown ... for ... not ...

NOTE—Contn. sheet.

WD A/1789—GPB—60,000—20 8 18—S.

164 10

G. R. S. III-2]

General and Revenue Secretariat. | Mus File No. 233 of 1926

Serial No.

28) Fair draft put up as per members order. Is fair on file remarks

Dy 26/9/25

Dft Agreed

29) I have made a few corrections. Draft may be appd

Rev Secy with Compts

Dy 30/9

30) Issue

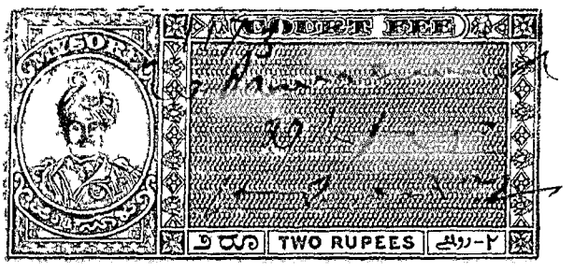
Dy 3.10.25

4 To, Mus Contror & Compts
No 413-H Dy 8.10.25
makes certain observations in the matter of permitting the petrs to file a suit for the recovery of possession of S. No 135 refd to and requests that he may deal with the case afresh in the light of the above observations

NOTE—Contn. sheet

WD A 1789—GPB—60,000—20-8 18—S.

2.7128




Reg No III
Chamarajapura

17 FEB. 1925

In the Government of Mysore,

Bangalore.

Muz. App. No. /24-25.

GEN. & REV. 18 FEB 1925

Muz.223-24-1. Dr-1364

Appllents (Plaintiffs).- (1). Syed Oosman son of Syed Baddruddin Shakhadri, aged about 64, milk vendor, residing ~~in Allauddin Shah Makkan~~ New Samadhi, Chamarajapura, Laskar Mohalla, Mysore.

(2). Hajee Makeem, son of Rahimankhan Sab, Mussalman, aged about 90, residing opposite to Tajuddin Mahadi, Charmada Mandi Street, Mandi Mohalla, Mysore.

( ). Mahammad Peer, son of Hajee Makeem, aged about 3 , residing in Mandi Mohalla, employed in Josuph Alla Makhiya Sait, Mysore.

(4). Yusuff Khan, Nephew of Appellant No. (1), aged about 25, watchman, Krishnarajendra Mills, Mysore.

Respondents, (Defendants).-1. Syed Ameer, son of Baddruddin Shakhadri, Mussalman, aged about 50, Palace Bar Nayak, Mysore.

2. Syed Kamaluddin, brother of Respondent No.1 above, Contractor, residing in Masha Yakh Allauddin Makkan, Mysore.

3. Haphizabi.

4. Phathamabi.

Respondents 3 and 4 are the sisters of Respondent No.1 above and are residing in Allauddin Shah Makkan.

---

Under Section 21 of the Muzarai Regulation, the Appellants above named beg to prefer this appeal from the order of the Deputy Commissioner in Muz. Petition No. C.226 of 23-24 dated the 22nd November 1924, refusing to accord sanction to the appellants to file a suit against the respondents of the religious and public Trust i.e., wakf to grave yard subsisting on S.No.132

132 and to set forth the following grounds of appeal.

1. The Lower Court, while according sanction in respect of S.No. 132, was wrong in withholding the same in respect of S.No. 135 on the mere ground that it is not described as "Devadaya" Inam. A reference to the Sannad filed in the Lower Court will show that this Inam was granted by Sri Krishnarajendra Wodeyar, Bahadur in the year 1818 for purpose of Makkan to one Meshayakh ~~Kazi~~ Allauddin Shakhadri, first appellant's great-grand father, who was a Fakir and a saint and who, before his death, dedicated the same for wakf purposes (res religiae) i.e., keeping the grave-yards in proper condition, illuminating the same, performing Urus and feeding Fakirs out of the income derived from tamarind and other trees situated therein

2. Under Mahammedan Law, dedication of certain properties for purposes of Makkan constitutes Wakf and all incidents relating to wakf applies to S.No.135 even though it is not described as "Devadaya" and the Lower Court has failed to recognise this principle of Mahammedan Law relating to Wakf.

3. The judgment of the Lower Court is otherwise opposed to law, facts and probabilities of the case.

The Appellants, therefore, humbly pray that this ~~Court~~ Court may be pleased to reverse the order of the Lower Court and grant sanction in respect of S. No. 135 also and to order the respondents to pay the costs of the appellants throughout.

27.M.9
Hajee Mukeem

In the Court of the Deputy Commissioner,
Mysore District.

Mmy. mis. pet. c. 226/23-24.

| Petitioners | | Counter petitioners |
|---|---|---|
| (1) Syed Osman | vs. | (1) Syed Ameer |
| (2) Haje Makeem | | (2) Syed Kamaluddin |
| (3) Mahomed Peera. | | (3) Fakrabi |
| (4) Yusuf Khan. | | (4) Hafeezjabi |

petitioners pray for permission to file a civil suit against the Counter petitioners under Section 92 of the Code of Civil Procedure on the ground that the latter are in wrongful possession and enjoyment of Trust properties (S. nos. 135 and 132 of Mysore Kasaba dry land Said to Contain Tamarind, mango, grave, Seethaphal and other fruit trees) belonging to Syed Jilanisha alias Jainulla Makan and Nawab Salabarjang Makan in Mysore City misappropriating the income for their personal benefit and thus frustrating the object of the founder of the Trust etc.

order.

Messers M. Ramaswamaiya for petitioners and B. K. Ramakrishnaiya for counter petitioners. Mr. Ramaswamaiya urges that S. no. 135 was given for Makkan and S. no. 13 was given for a grave yard, that Sedan...

of land for makkan and graveyard comes within the term of a "wakf" (page 194 of Amir Ali's Mahomedan Law Volume I 2nd Ed. p. 271), and that the opponents themselves admit that a portion of the land contains the grave that the body of the land is private property and that the Inchwars describe the lands as makkans.

The admissions of the opponents show they are keeping the trust property for their own private benefit.

To prevent such misuse, petitioners mother Sultan Bibi sued the opponents but she has been referred to this Court for sanction (O.S. 280 of 19-20 in 1st Munsiff's Court, Mysore.)

Mr. Ramakrishnaiya argues that while it is true that S. no. 135 was given as Inam by His late Highness Sri Krishnaraja Wadiyar III, it does not constitute a wakf, as the grant was not made by a Mahomedan and that there is nothing to show that the grantee dedicated the land to a charitable or religious purpose after obtaining the land. As regards S no. 132 there is nothing to show that the original grantor constituted a "wakf".

The Munsiff directed the petitioners to get themself declared a Muthwalli by a suit direct in the District Judge's Court and there is no need for action under section 92 C.P.C.

---

It is admitted that S.no 132 is Inam and it is Devadaya Inam. Devadaya

Devadaya was a Christian by
very nature a Brahmin by birth
before and Section 92 C.P.C could
apply to suits for claims among the
interested there in. As the office
sought to avoid
lands could be
the application of the petitioners for
sanction to sue
him from

G. R. S. VI G-32] B5)—WD 0527

SUBJECT

*Diary No of letter replied to*

General and Revenue Secretariat

( )

*, the 192 .*

Date of issue 2.3.25

Signed by Asst. T. R.

Section Misc.

File No. 233-24

Serial No.

No. 1991 two

To The Asst. Comr. Mysore

Sir,

I am directed to forward herewith for favour of report with records petition Regd no. 1364 without date from Syed Usman and others of Mysore appealing against the Mysore Dy. Commr's. Asst. order refusing sanction to file a suit against their opponents in the matter of the misappropriation of the realizations from S. no. 135 alleged to have been enforced against Jaimulla and Nawab Sahdar Jang Mahal

over

my true city.

I have the.

Yours.

Hon. Sec. Secretary

27.2.25

4122½ 0.27 4-5
7-4-25.

From

THE DEPUTY COMMISSIONER,
MYSORE DISTRICT,

To. The Revenue Secretary to Government of Mysore
~~To~~ Mysore
through THE ~~REVENUE~~ COMMISSIONER
IN MYSORE, BANGALORE.

Dated } 4th April 25.
Despatched. } By regd post
Received 7.4.25.
General No. R/C. 597/24-25.
No.

Enclosure No. one file
D1 Dis 89/24-25, 1 petn. with

Subject

Submits report on the appl petition of Syed Usman and others of Mysore.

Br. ... 7 ...
9 APR 1925
G. D. SECTION

D 8-4-25
Forwarded with Compliments to the Secretary to Govt., Rev. Department.

C. Balasundaram Esq
Mysore Commissioner

7/4.

REV. SECRETARIAT
11 APR 1925
BANGALORE

D. 1621 of 24-25
Mysore 2.22-2.40 P.M.

C.597/24-25

**Office of the Deputy Commissioner, Mysore District.**

*Dated, Mysore,* 3rd April 1925.
4

From

A.V.Ramanathan, Esq., B.A.,
*Deputy Commissioner, Mysore District, Mysore.*

To

K.V. Anantaraman, Esq.,B.A.,
Revenue Secretary to Government.

Through The Muzrai Commissioner
in Mysore, Bangalore.

Sir,

With reference to your letter No.1291/Muz 233-24-2 dated 2nd March 1925 forwarding for report with connected records petition from Syed Usman and others of Mysore appealing against this office order refusing sanction to file a suit against their opponents in the matter of misappropriation of the realizations from S.No.135 alleged to have been endowed as Inam to Jainulla and Nawab Sabdarjang makan in Mysore City, I have the honor to state that the petitioners (present applications before Government) filed a petition before this office on 14th July 1924 praying for permission to file a civil suit under section 92 of the C.P.C in the District Court, Mysore, against the C/ petitioners Syed Amir and 3 others, on the ground that the latter were in wrongful possession and Enjoyment of the Trust properties viz S.Nos 135 and 132 (dry) of Mysore Taluk belonging to Syed Jilanisha alias Jainulla Makan and Nawab Sabdarjang Makan in Mysore City, misappropriating the income from these lands for their personal benefits and thus frustrating the object of the founder of the Charity etc (vide plaint in the enclosed file which gives all details).

This petition came on for final hearing on 22nd November 1924 when the arguments on both Sides through their Counsels were heard. The counsel for the petitioners urged that both the S.Nos. mentioned above were given for the upkeep of Makan and a grave-yard, that such dedication of land constituted a "Wakf" property and as such the counter petitioners Syed Amir and other had no reason to be in wrongful possession and Enjoyment thereof etc.

Mr.Ramakrishnaa Iya Advocate for C/Petitioner's argued that S.No.135 did not constitute an "akf" as the grant ~~was not~~

the grant was not made by a mohamedan and that there was nothing to show that the grantee dedicated the land to a Charitable and religious prpose after obtaining it.

It is admitted that S.No.132 is Inam and it is a Devadaya Inam. It finds a place in the Inam Quit Rent Register of Mysore Talukas having been granted for the maintenance and upkeep of Safdar Jung Saib's Kabarastan. As Devadaya Inam constitutes by its very nature a trust for a religious purpose, and as opponents had set up a claim that such lands could be treated as private property, the application of the petitioners for sanction to sue the opponents and restrain them from violating the trust, only so far as it related to S.No.132, was admitted and necessary sanction under section 92 granted to them as prayed for. (vide orders passed on 22nd November 1925 Flg 7)

As no documentary proof was for the coming to substantiate the statement of the petitioners that S.No.135 Warsalloa Trust property a Devadaya Inam dedicated to a Charitable or religious object and that it was misused by the opponents, sanction to file suit in respect of this S.No.could not be granted to them (petitioners)

Hence the present appeal before Government. The connected file of papers (Dl Dis 89/24-25)ending with this officeorder dated 22nd November 1924 is enclosed for reference and kind return.

I have the honour to be,

Sir,

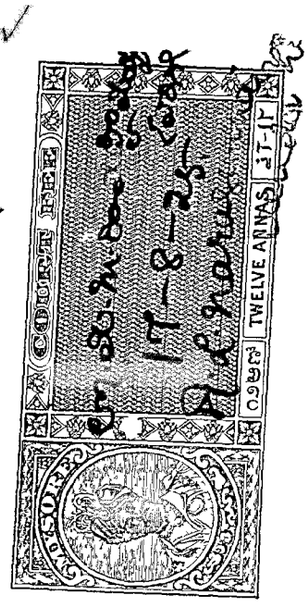
Your most obedient servant,

Deputy Commissioner,

Mysore District.

TMK.

GEN. & REV. SECRETARIAT
28 AUG 1925
MUMBAI
B. No. 261




Before the Government of Mysore
Bangalore

REV. SECRETARIAT
11 AUG 1925
BOMBAY

Mrs appellants of rep

Petitioners - Syed Osman sollis

&

opponents - Syed Ameer sollis.

The petitioner Syed Osman
begs to state as follows -

That his and other petitioners
have filed an appeal from the
decision order of the Deputy Commissioner
of Mysore before the Government
of Mysore on 16.2.25.

2. That the petitioners have
to file a suit in the District
Judge's Court Mysore after obtaining
sanction for the same under
of the CP Code.

3 That the suit property

filed within the period of limitation and it cannot be so done without a copy of the impugned order.

4 That though more than 6 months have since elapsed, the petitioner begs to state that his appeal has not been finally heard.

5 That if this appeal is not finally disposed of, the petitioner will be precluded from filing the civil suit on the account of the bar of limitation.

6 Under these circumstances, the petitioner humbly prays that this Hon'ble Court may be pleased to postpone his case only.

Dated: 18.8.25

Petitioner

Solemnly affirmed before me by the deponent who is identified by the Clerk of Advocate.

18.8.25

Proceedings of the Government of His Highness the Maharàja of Mysore.

---

Read:-

Petition registered No. 1364 dated 18-2-1925 from Syed Usman and others of Mysore appealing against the Mysore Deputy Commissioner's order refusing sanction to file a ~~suit~~ against Syed Ameer and others in the matter of the misappropriation of the income from S.No. 135 alleged to a Trust property of Jainulla and Nawab Sabdarjang Makan in Mysore City.

Correspondence ending with letter No. N. Dis 1202-1924-25 dated 8-4-1925 from Mys. Commissioner, forwarding the Deputy Commissioner's report on the subject.

---

Order No. 413-4 dated. 8th October 1925

Mus 233-24-4

The appellants applied to the Deputy Commissioner, Mysore for permission to file a Civil Suit against their opponents Syed Ameer and others under Sec. 92 of Civil Procedure Code with regard to S.Nos. 132 and 135 alleged to belong to Jainulla and Nawab Sabdar Jang Makan in Mysore City. The Deputy Commissioner gave sanction in respect of the misapplication of the Trust subsisting on S.No. 132 only. As regards S. No. 135, he reported by land i [illegible] in his opinion a case sanction for ~~he has refused sanction~~ on as no documentary filing a suit in respect of it proof was forthcoming to substantiate the statement of the petitioners that the S.No. was also a Trust property or a Devadaya Inam, and that it was misused by the opponents.

Government observe that the Deputy Commissioner ~~has no right~~ to decide whether

whether any property is a Trust Property or not. This is primarily a question for the Court to decide ~~and not for the authority required to accord to sanction to file a suit~~. The Deputy Commissioner has only to satisfy himself that there are prima facie grounds existing in support of the allegation made by the petitioners; and if he is satisfied he ought to accord sanction as prayed for.

In the Deputy Commissioner's order under appeal, no reasons are assigned for refusing the application to file a suit in respect of S.No. 135. Having regard to the fact that all the persons interested in a trust have a right to bring a suit and that the primary object of permission is only to prevent a number of reckless suits by different persons interested in the subject matter, sanction in the present case should have been given in respect of S.No. 135 as well. The Deputy Commissioner will take action in accordance with the foregoing directions.

1875

Secretary to Government.
Revenue Department.

To

The Muzrai Commissioner, In Mysore.
(returning the enclosures).

Proceedings of the Government of His Highness

the Maharaja of Mysore.

---

Read.-

Petition registered No. 1364 dated the 18th February 1925 from Syed Usman and others of Mysore appealing against the Mysore Deputy Commissioner's order refusing sanction to file a suit against Syed Ameer and others in the matter of the misappropriation of the income from Survey No. 135 alleged to be a Trust property of Jainulla and Nawab Sabdarjang Makhan in Mysore City.

2. Correspondence ending with letter No. N.Dis. 1202 of 1924-25 dated the 8th April 1925 from the Muzrai Commissioner in Mysore forwarding the Deputy Commissioner's report on the subject.

---

Order No. Ly 13-4 | Mey 233-24-4

Dated, Bangalore, the 8th ~~September~~ October 1925.

The appellants applied to the Deputy Commissioner, Mysore for permission to file a Civil Suit against their opponents Syed Ameer and others under Section 92 of Civil Procedure Code with regard to Survey Nos. 132 and 135 alleged to belong to Jainulla and Nawab Sabdar Jang Makhan in Mysore. The Deputy Commissioner gave sanction in respect of the misapplication of the Trust subsisting on Survey No. 132 only. As regards Survey No. 135, it is reported by the Deputy Commissioner that he did not accord sanction for filing a suit in respect of it as in his opinion no documentary proof was forthcoming to substantiate the statement of the petitioners that the Survey Number was also a Trust property or a Devadaya Inam, and that it was misused by the opponents.

2. Government observe that it is ~~in the presence~~ (not the function vested) of the Deputy Commissioner to decide whether any property is a Trust Property or not. This is primarily a question for the Court to decide. Having regard to the fact that all the persons interested in a trust have a right to bring a suit and that the object of the Law in ~~requesting~~ insisting upon sanction of the Deputy Commissioner being obtained to file a suit

is evidently to prevent a number of reckless suits being filed by different persons interested in the same subject matter. The Deputy Commissioner in an application for sanction under section 92 of the Civil Procedure Code, has only to satisfy himself that there are prima facie grounds existing in support of the allegation made by the petitioners and if he is so satisfied he would not be justified in denying the sanction required for filing the suit. If the suit fails and the property is found by the Court to be not Trust Property it is the persons suing that will bear the costs of the litigation and not the Deputy Commissioner. The Deputy Commissioner is requested to deal with the application afresh in the light of the above observations.

Secretary to Government,
Revenue Department.

To

The Muzrai Commissioner in Mysore (returning the enclosures)
The Deputy Commissioner, Mysore District.